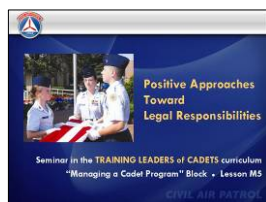


POSITIVE APPROACHES TOWARD LEGAL RESPONSIBILITIES

- Scope:** The first duty of a leader of cadets is that of a chaperone. During this seminar, students will discuss the concept of *in loco parentis*, and review the safety and supervision policies that govern the Cadet Program. Finally, students will apply their understanding of legal issues related to the Cadet Program by analyzing a case study.
- Format:** Informal Lecture and Case Study
- Duration:** 50 minutes
- Objectives:**
1. Discuss the concept of *in loco parentis*.
 2. Describe CAP’s policies regarding cadet safety, supervision, and related issues.
 3. Analyze a case study and identify potential legal issues related to the Cadet Program.
 4. Discuss methods for taking a positive approach toward fulfilling legal responsibilities related to the Cadet Program.
- Resources:** CAPR 52-10, *Cadet Protection Policy*; CAPR 52-16, *Cadet Program Management*, Chapter 1; case study (a students’ version and an instructor’s version are available); Powerpoint slides; note-taker.
- Note:** *If possible, a CAP legal officer should lead this seminar. HQ CAP/GCA provided the narrative below in the event that a CAP legal officer is not available. Of course, CAP legal officers are free to use the lesson plan merely as a guide (vs. a script to be followed exactly). What matters most is that the student fulfill the four objectives listed above.*
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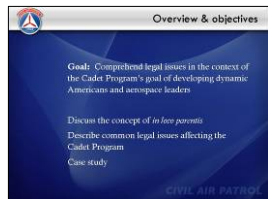
STARTING POINT

[Introduce yourself and state the seminar’s topic.]



INTRODUCTION

This slide illustrates one dad’s sentiment about our legal obligations: “They are not *your cadets*, they are *my children*.” As we discussed in the “Partnering with Parents” seminar, we have a moral duty to support the parents of CAP cadets. This seminar takes that conversation a step further by considering the legal responsibilities we have as senior members.



OVERVIEW

During the first half of this seminar, I'll present an informal lecture outlining some of the main legal issues you need to know about as you work with cadets. Feel free to ask questions at anytime. During the second half of the seminar, you'll analyze a case study and try to spot potential legal issues as they relate to the Cadet Program. The case study will also provide an opportunity to discuss ways to take a positive approach toward fulfilling our legal responsibilities. Overall, the goal is not to qualify you as a legal expert, but simply familiarize you with some of the main legal issues you might face, and let you know how your legal officer can assist you.



MAIN POINT #1: SENIORS STAND IN PLACE OF PARENTS

[Informal Lecture]

The concept of *in loco parentis* describes our duties as adults who interact with youth.

A. *In Loco Parentis*. The term is Latin for "in the place of a parent." It refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent. For example, state law gives school teachers some areas of responsibility in which they act *in loco parentis*. State laws will vary, but as a senior in charge of cadets, you're going to be the "grown-up." When bad things happen, people will judge whether you were acting responsibly. At a minimum, this means you must make the adult decisions that protect the immediate health and safety of cadets in your care.

B. The 60 Minutes Test. An easy way to consider how you should fulfill your responsibilities as a leader of cadets is to remember the *60 Minutes* test. Imagine that at the end of the day, Mike Wallace and the *60 Minutes* camera crew will appear at your door to question your leadership. Ask yourself how your actions will stand-up against his tough questioning.

C. Treat Parents as Partners. In an earlier seminar, you discussed ways to partner with parents (ie: by providing them with a schedule of events, a roster of senior members and their phone numbers, and keeping the lines of communication open).

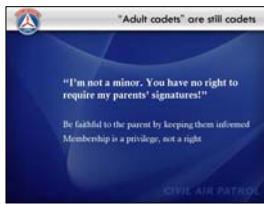
D. Parents and the Legal System.

As Allies and Adversaries. Minors cannot sue on their own behalf. Parents (or others at their behest) sue on behalf of their children. Similarly, minors cannot be sued directly. Therefore, if you get involved in litigation involving minor cadets, it is more likely than not that the people on the other side are going to be parents.

With this in mind, treat parents accordingly. Don't be subservient to them, but act as their partner. Adopt that attitude and you'll minimize the likelihood of being sued.

As Jurors. Two CAP legal officer were discussing whether to inform parents that their cadets had been sexually active on CAP time. The legal officers were jousting about the minors' right to privacy as compared to the parents' right to be informed about the activities of their children. The issue's legal complexities were quickly unraveled when one of the legal officers rhetorically asked, "Which jury would you rather face, the jury of twelve parents deciding whether the children's rights were violated or the jury of twelve parents deciding whether the parents' rights had been violated?" The lesson is clear. In murky situations it is good to ask yourself, "How will this look to the twelve people in the box?"

TRANSITION: With the concept of *in loco parentis* as background, let's move on to discuss some specific legal issues that relate to the Cadet Program.



MAIN POINT #2: ADULT CADETS ARE STILL “CADETS”

[Informal Lecture]

Adult cadets are still “cadets.” If we were to tell that to a cadet, one objection you might hear in reply is, "But I'm not a minor and you have no right to require that I obtain my parents' signatures!" The reasons for requesting parental signatures, even if the cadet is of age, are two-fold:

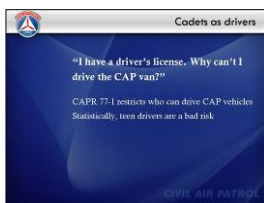
ISSUE: PARENTAL PERMISSION

Parents Deserve to Know. As discussed earlier, we should treat parents as partners. If we fail them, we threaten our mission. Parents do not want to be surprised that Little Johnny is out of town on a CAP activity. For Johnny, it is an inconvenience and perhaps an affront to his pride. To CAP and the parent, it is being faithful to a partner.

Cadets are Trainees. The Cadet Program is a *training program for adulthood*. As long as one is a cadet, one is a *trainee*. Although this is not a termination issue, some of the same rationale can be seen between the lines in CAPR 35-3, *Personnel Procedures - Membership Termination*. This regulation provides that membership is a privilege, not a right. Some of the causes to terminate a cadet membership are apparently based on the cadet's loss of "trainee" status (ie: failing to attend meetings, or not progressing in rank). When their child is a *trainee*, it is reasonable and appropriate that *parents*, as the people most responsible for that training, be active participants in the training - the CAP Cadet Program.

Frequent Question: Is there a policy regarding parental signatures where the law doesn't require them?

Answer: The practice is to defer to the wing commander the issue of whether an emancipated minor or a cadet of legal age may sign on their own behalf without a parental signature.

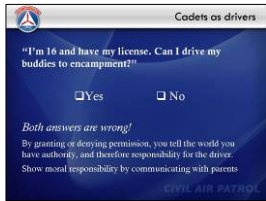


ISSUE: CADETS DRIVING CAP VEHICLES

Some cadets ask, "I have a driver's license. Why can't I drive the CAP van?" CAPR 77-1, *Transportation - Operation and Maintenance of Civil Air Patrol Vehicles*, limits the authorization of persons under 21 to drive CAP owned vehicles.

CAPR 77-1. Members who are under 21 years of age, but at least 18 years of age, may be permitted to operate general purpose CAP owned vehicles (see CAPR 77-1 for details). They may not carry passengers or tow any trailers.

Teens are High Risk Drivers. The reasoning behind the CAP policy is simple: statistically, teenager drivers are a bad risk. The risk of motor vehicle crashes is higher among 16- to 19-year-olds than among any other age group. In fact, per mile driven, teen drivers ages 16 to 19 are four times more likely than older drivers to crash (ref: Center for Disease Control, cdc.gov).



ISSUE: CADETS DRIVING OTHER CADETS

Likewise, you'll probably be asked a similar question about cadets driving other cadets to CAP activities.

"I'm 16 and have my license. Can I drive my buddies to encampment?" As shown on the slide, "yes" and "no" are both wrong answers to this question. What a cadet does to get to a CAP activity is between the cadet and their parents. If CAP is not providing transportation, make sure parents and passengers are aware of that fact.

Moral Responsibility vs. Legal Responsibility. By granting or denying permission, you tell the world that you have authority (read: responsibility) for the driver during the time he's driving to and from the encampment. Although CAP could introduce evidence that you had no such authority, that would nevertheless be evidence of *legal responsibility*. On the other hand, to ignore the practical aspects of how cadets get to and from CAP activities would be to shirk *moral responsibility*.

Partner With Parents. Once again, to take a positive approach toward your responsibilities, partner with parents. Let them know when an activity is being planned, and frequently repeat the notion that CAP *is not* providing transportation, but that they can work out transportation among themselves. Let parents know that if their cadet wants to drive himself and his buddies to an activity, the authority for making that decision lies with the parents of the cadets involved.

TRANSITION: It's likely you'll need to address these transportation-related issues often as you work with cadets. Next, we'll consider a much more serious issue that we hope you never encounter: cadet abuse.



MAIN POINT #3: REPORT SUSPECTED ABUSE

[Informal Lecture]

You all completed CPPT, but we'll take a moment to add a generous "footnote" to CPPT-related issues:

Laws Vary from State to State. Because laws vary from state to state, you should ask your legal officer if CAP or any of its members, as such, is a mandatory reporter of suspected child abuse. Is it enough that the wing commander - alone - report the suspicion and the basis for it? Is every adult with a suspicion required to report? How *strong* must my suspicion be before I am bound to report? The answers to these questions depend on local law.

The Tough Way to Learn the Law. Imagine standing in front of a judge and having to say, "I told my wing commander everything I knew about the suspected abuse, your honor. I didn't realize I personally needed to report what I knew to the authorities."

In approximately 2001, a case of failure to report suspected child abuse was tried to conclusion. A teacher had reason to believe that one of her students was being abused. She reported it to a school counselor who, in turn, reported it to the school principal. The counselor interviewed the student, advised the principal what she'd learned, and then reported the matter to the appropriate child protective agency. The teacher and principal, relying on the report by the counselor, did not report the suspected abuse to the authorities. The teacher and the principal were convicted of a misdemeanor for having failed to report.

From this situation we can learn two lessons. First, be sure to know the law in your state. Second, as you work through sensitive issues, do not unnecessarily involve anyone, as their involvement in the situation may create in them a duty to report.

Frequent Question: "I am a paramedic (teacher, doctor, lawyer, etc.) My license makes me a mandatory reporter. My conflict is that I am also required to report to the appropriate authorities as required by state law, which conflicts with CAP regulations, as that reporting is the responsibility of the wing command structure. How I am supposed to handle this apparent dilemma?"

Answer: CAP regulations never supersede state or federal laws. However, there is no conflict between CAP regulations and state laws that require you to report a situation to the state. If you have a legal requirement to report a situation to the state, you should do so to protect yourself. In addition, you should report the situation to your wing commander as required by CAP regulations. As a courtesy, you should also advise the wing commander that you have made a report to the state as required by law, and advise your squadron commander.

TRANSITION: Next, we'll consider a related topic that is less serious than child abuse, but much more common: fraternization and dating.



MAIN POINT #4: FRATERNIZATION HAS A COMMAND, LEGAL, AND MORAL DIMENSION

[Informal Lecture]

Fraternalization Defined. According to Webster, to “fraternize” means “to associate or mingle as brothers; to associate with members of a hostile group, especially when contrary to military orders; or to be friendly or amiable.

As a practical matter, fraternization has usually been an issue kept within the cadet chain of command (meaning cadets in charge of cadets) unless and until the fraternization was so “friendly or amiable” as to exceed the notion of mingling “as brothers or on fraternal terms” (sexual activity, for example).

Command Issues. Fraternization in the military carries with it problems of command, control, discipline and “the good order and discipline of the unit.” Family members or lovers in the same command structure is often seen as a problem waiting to happen. The power in a social/emotional/familial relationship and the strong alliances and “enemies” that spring from them complicates the authority and power in a CAP working relationship.

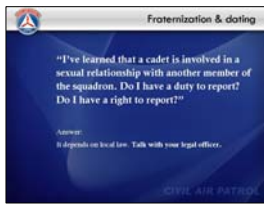
Owing to the nature of CAP, we don’t consider the problem fraternization brings to “the good order and discipline of the unit” when both husband and wife or two consenting senior members are in a relationship and belong to the same unit. However, the 20-year-old senior member and 18-year-old cadet is a command problem because of the relative command of one over the other. The two 16-year-olds pose a problem because of the maturity required (and usually absent at that age) in dealing with such relationships. If the two individuals involved are in separate units, it is only a command issue if the hierarchy puts the two in a superior / subordinate situation.

Most commanders do not deal with the issue until it becomes a behavioral issue most typically in the form of rampant public displays of affection or “disaffection” between the individuals involved. As to the command issue, that is a matter for the unit commander(s) involved. If there is more than one command involved, the two commanders should consider conferring before acting.

Legal Issues. “Dating” in this discussion of minors and legal propriety is sometimes a polite code referring to sexual or intimate relationships. The simple fact of law is that minors are not capable of consent. Sex with someone who has not/cannot provide consent is a crime

But, even if minors are acting voluntarily or of their own free will, “statutory rape” or “unlawful intercourse with a minor” is a crime. Period!

But in California (and probably elsewhere), minors have a constitutional right to privacy. The court has held that the state may not mandate reporting of voluntary “sexual contact between minors of similar ages” because of a minor’s right to privacy. Whether that “right to privacy” means a right to have intercourse or merely the right to not have it reported by mandate is another question.



Frequent Question: I've learned that a cadet is involved in a sexual relationship with another member of the squadron. Do I have a duty to report? Do I have a right to report?

Answer: It depends on local law, check with your legal officer.

Moral Issues. Taken literally, fraternization - to associate or mingle as brothers - is a good thing. It is only where the word is intended as a code for a sexual relationship that it becomes a moral issue. This breach of morality involves the participants as well as the observers -- those who might be affected by the example set by the participants.

To what extent does CAP have a responsibility for the morality of the child? To what extent does CAP stand in the position of parent with regard to the child? Ages of significance in answering these questions include the "age of reason," "age of responsibility," and the "age of majority."

The age of reason is the age at which a child can be held responsible for his or her conduct, and is well passed by the time a youth joins CAP.

The age of responsibility is the age at which society considers a child "responsible enough" to drive unaccompanied, typically 16 years of age.

The age of majority, which varies from state to state (with 18 years of age being generally accepted), is the time when one becomes an "adult" for almost all purposes. For example, in some states 18-year-olds can sign contracts, vote, go to war, etc., but cannot drink alcoholic beverages or purchase cigarettes. Some states establish an age of consent that is below 18. Each state is different, so check with your legal officer about the age of majority and any limitations that may be imposed.

TRANSITION: We've discussed some of the major legal and moral issues related to the Cadet Program – the concept of *in loco parentis*, cadet transportation, child abuse, and fraternization and dating. During the remainder of the seminar, we'll analyze and discuss a hypothetical case where many of these issues will be on display.

